



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Janie B. Lopez
File: B-249968
Date: February 16, 1993

DIGEST

A service member died in August 1977 from gunshot wounds. The claim for unpaid retired pay and Survivor's Benefit Plan (SBP) annuity submitted to this Office by the member's spouse 15 years after the slaying is barred by 31 U.S.C. § 3702, which requires that a claim must be received by the Comptroller General within 6 years after the claim accrues, and which grants this Office no authority to waive this limitation, regardless of the reasons the claim was not submitted within the required time.

DECISION

This action is in response to request from the widow of a deceased member for reconsideration of our Claims Group's determination that her claim was barred by the statute of limitations. We affirm the Claims Group's denial.

Sergeant Leonardo G. Lopez retired from the Army in 1972 prior to the passage of the Survivor Benefit Plan (SBP), but elected to participate in the SBP on September 15, 1973. On August 3, 1977 he was shot to death. Police suspected his wife, Janie B. Lopez, in the slaying. However, she was never indicted.

On August 30, 1977, Ms. Lopez submitted an application for SBP annuity payments and a claim for the unpaid retired pay due on the date of his death. The Defense Finance and Accounting Service (DFAS) notified Ms. Lopez by letter dated November 1, 1977, that she could not receive unpaid retired pay and SBP benefits to which she was otherwise entitled unless she presented evidence that she had been clearly absolved of any felonious intent in her husband's death. She renewed her inquiry in 1978 and received the same response. Subsequently, claims were filed by her or on her behalf in 1988, 1991, and 1992. Based on continuing communications with police authorities from 1977 through 1992, DFAS maintained its position that in the absence of indications that there was no felonious intent on her part

the claim could not be paid, and informed her that she could file a claim with this Office.

On November 5, 1991, our Claims Group received a claim filed on behalf of Ms. Lopez requesting she be provided the benefits to which she was entitled. In a letter dated July 9, 1992, our Claims Group concluded that since Ms. Lopez did not file her claim with our Office until 1991, approximately 15 years after her claim arose, it was barred by the statute of limitations under the Barring Act, 31 U.S.C. § 3702 (b) (1).

Ms. Lopez, has not submitted a request for reconsideration to this Office, urging that the Barring Act does not apply, and that she had good reason for not filing a claim earlier with this Office. We need not deal with whether there was felonious intent on the part of Ms. Lopez since it is our view that her claim is barred.

The statute of limitations applying to claims submitted to this office is the Barring Act, 31 U.S.C. § 3702 (b) (1), which limits our jurisdiction to consider claims to those that are filed with this Office within 6 years of the date they first accrue. An amendment to the regulations regarding claims against the United States provides that a claim is considered timely filed for purposes of the Barring Act when the claim is filed either with GAO or with the agency whose activities gave rise to the claim, within 6 years after the claim accrues. The amendment affects only claims that accrue after June 15, 1983. Since Ms. Lopez' claim accrued in August 1977, it does not come within the scope of the amendment.

A claim for SBP arises upon the death of the participating member. Ms. Lopez' claim for an SBP annuity therefore arose on the date of her husband's death. Her claim was not received by this office until November 1991. Further, since the claim arose in 1977, filing with the Army did not meet the requirements of the amended regulations. Accordingly, her claim is barred and this office is precluded from considering it. Furthermore, we have no authority to modify or waive the provisions of the Barring Act or make any exemptions to the time limitations it imposes. Frederick C. Welch, 62 Comp. Gen. 80 (1982).

It may be argued that this is a continuing claim; that is, that a new claim arises each time the government fails to make a payment. Under this theory payments may be made for 6 years prior to the filing of a claim regardless of when the claim first arose. See, Burich v. United States, 366 F. 2d 984, 986 (Ct.Cl. 1966), cert. denied, 389 U.S. 885 (1967). However, a Court of Appeals decision, Hart v. United States, 910 F. 2d 815 (Fed. Cir. 1990) rejected this theory

and concluded when all the events fixing the liability of the government have transpired then the statute of limitation runs from that time. This Office follows the decisions of the federal courts in its administrative settlements of claims where, as in Hart, the issues have been fully considered by the court. In our case Application of the Barring Act to Annuity Claims, B-243146, B-243147, B-243148, May 21, 1992, we held that we would henceforth follow the doctrine enunciated in Hart.

The argument offered here that Ms. Lopez had justification for not filing with this office in a timely manner (that she was involved in a domestic matter and she had not been informed of her rights) does not affect the outcome. The reason a claim is not submitted within the statute of limitations is not relevant. Carlton L. Shepard, Jr., B-204542, November 30, 1981. Thus, regardless of the reasons for her delay in pursuing her claim, we cannot make an exception in her case.

Accordingly, we find that Ms. Lopez' claim for SBP benefits is barred by the statute of limitations and may not be paid.

The Claims Group's denial is affirmed.

for *James F. Hinchman*
James F. Hinchman
General Counsel